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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,298	06/20/2003	Julian N. Nikolchev	016355-002580US	6671

7590 04/21/2006

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EXAMINER
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LOPEZ, AMADEUS SEBASTIAN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/600,298		NIKOLCHEV ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Andrea M. Ragonese		3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/2003; 6/2005</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see pages 4-5, filed June 23, 2005, with respect to the rejection of **claims 12-14, 19-53, 66-71, 73-79 and 81** under 35 U.S.C. § 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

### ***Inventorship***

2. In view of the papers filed June 20, 2003, the inventorship in this nonprovisional application has been changed by the deletion of Ashish Khera, Donnell W. Gurskis and Steven Bacich. The inventorship now names Julian N. Nikolchev and Dai T. Ton as the remaining inventors on the instant application.

3. Correction of Office records has been completed to reflect the inventorship as corrected.

### ***Terminal Disclaimer***

4. The terminal disclaimers filed on June 23, 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration dates of US Patent No. 6,684,884 and US Application Serial Nos. 10/779,541 and 10/641,333 have been reviewed and are accepted. The terminal disclaimers have been recorded.

### ***Interference***

5. Applicant has suggested an interference pursuant to 37 CFR 41.202(a) in communications, filed March 17, 2004 and June 23, 2005, since the claims as filed appear to be substantially copied from US Patent Application Serial No. 08/770,123 and/or US Patent No. 6,096,052.
6. Applicant has failed to provide sufficient information to identify all the applications and/or patents with which the Applicant seeks an interference. See 37 CFR 41.202(a)(1) and MPEP § 2304.02(a).
7. Applicant has also failed to (1) identify all claims the Applicant believes interfere, and/or (2) propose one or more counts, and/or (3) show how the claims correspond to one or more counts. See 37 CFR 41.202(a)(2) and MPEP § 2304.02(b).
8. Additionally, Applicant failed to provide a claim chart comparing at least one claim of each party corresponding to the count. See 37 CFR 41.202(a)(3) and MPEP § 2304.02(c).
9. Applicant, in addition, has failed to provide a detailed explanation as to why Applicant will prevail on priority. See 37 CFR 41.202(a)(4), (a)(6), (d) and MPEP § 2304.02(c).
10. Applicant should note that upon consideration of the parent applications of the instant invention, it appears that the ***effective filing date for claims 22-81 (claims drawn to a device which is "radially expandable") of the instant application is September 24, 1997***, which is after the filing date of US Application Serial No. 08/770,123. The effective filing date for **claims 12-21** appears to be June 7, 1995.

11. **Claims 38-81** have been added in a communication filed on March 17, 2004 to provoke an interference. Applicant failed to provide a claim chart showing the written description for each claim in the Applicant's specification. See 37 CFR 41.202(a)(5) and MPEP § 2304.02(d).

12. Therefore, the requests for interference, filed March 17, 2004 and June 23, 2005, are acknowledged. However, examination of this application has not been completed as required by 37 CFR 41.102(a). Consideration of potential interference is premature. See MPEP § 2303.

### ***Conclusion***


13. Applicant is given **ONE MONTH or THIRTY DAYS**, whichever is longer, from the mailing date of this communication to correct the deficiencies. **THE PROVISIONS OF 37 CFR 1.136 DO NOT APPLY TO THE TIME SPECIFIED IN THIS ACTION.**

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese** whose telephone number is **571-272-4804**. The examiner can normally be reached on Monday through Friday from 9:00 am until 5:00 pm.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR   
April 12, 2006

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700